

Notice of Rulemaking Hearing

Tennessee Department of Environment and Conservation Division of Remediation

There will be a public rulemaking hearing before the Division of Remediation acting on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendments to Rule Chapter 1200-01-13, Hazardous Substance Remedial Action, pursuant to Tennessee Code Annotated 68-212-201 et. seq., the "Hazardous Waste Management Act of 1983". The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the 4th floor Conference Room of the L&C Annex located at 401 Church Street, Nashville, Tennessee from 10:00 AM to Noon Central Time on the 19th day of December, 2007. Additional written comments are assured of being considered if received by 4:30 PM CST, the close of business, December 26, 2007, in the office of Steve Goins, Division of Remediation, 401 Church Street, L&C Annex, 4th Floor, Nashville, TN 37243-1538.

Individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment & Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten days prior to December 19, 2007 (or the date such party intends to review such filings), to allow time to provide such aid or services. Contact the ADA Coordinator at 1-866-253-5827 (toll free) or (615) 532-0200 (Nashville) for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

Substance of the Proposed Rules

Amendments

Chapter 1200-01-13 Hazardous Substance Remedial Action

Subparagraph (b) of paragraph (1) of Rule 1200-01-13-.03 Remedial Action Fund is amended by deleting subparagraph (b) in its entirety and substituting the following language so that, as amended, Rule 1200-01-13-.03(1)(b) shall read as follows:

(b) Generation Fee - Amount and Manner of Assessment

Generators subject to this rule shall pay a fee based on the total amount of hazardous waste generated in the previous calendar year calculated on an as-generated (wet weight) basis in accordance with the below-listed schedule:

1. Amount of Hazardous Waste 2008 Fee (\$)
Generated in 2007

less than 2,645 lbs (less than 1,200 kg) \$0
2,645 – 7,164 lbs (1,200 – 3,249 kg) \$650.00
7,165 - 242,506 lbs (3,250 - 109,999 kg) \$0.090719 per lb (\$.20 per kg)
242,507 lbs or more (100,000 kg) \$22,000.00

2. Amount of Hazardous Waste 2009 Fee (\$)
Generated in 2008

less than 2,645 lbs (less than 1,200 kg) \$0
2,645 – 7,164 lbs (1,200 – 3,249 kg) \$715.00
7,165 – 240,502 lbs (3,250 - 109,090 kg) \$0.099791 per lb (\$.22 per kg)
240,503 lbs or more (109,091 kg or more) \$24,000.00

3. Amount of Hazardous Waste 2010 Fee (\$)
Generated in 2009

less than 2,645 lbs (less than 1,200 kg) \$0
2,645 – 7,210 lbs (1,200 – 3,270 kg) \$785.00
7,211 – 238,832 lbs (3,271 - 108,333 kg) \$0.108863 per lb (\$.24 per kg)
238,833 lbs or more (108,334 kg or more) \$26,000.00

4. Amount of Hazardous Waste 2011 Fee (\$)
Generated in 2010

less than 2,645 lbs (less than 1,200 kg) \$0
2,645 – 7,334 lbs (1,200 – 3,326 kg) \$865.00
7,335 – 237,418 lbs (3,327 - 107,692 kg) \$0.117935 per lb (\$.26 per kg)
237,419 lbs or more (107,693 kg. or more) \$28,000.00

5. Amount of Hazardous Waste 2012 Fee (\$)
Generated in 2011

less than 2,645 lbs (less than 1,200 kg) \$0
2,645 – 7,479 lbs (1,200 – 3,392 kg) \$950.00
7,480 – 236,207 lbs (3,393 - 107,142 kg) \$0.127007 per lb (\$.28 per kg)
236,208 lbs or more (107,143 kg or more) \$30,000.00

6. Amount of Hazardous Waste 2013 Fee (\$)
Generated in 2012 and
each year thereafter

less than 2,645 lbs (less than 1,200 kg) \$0
2,645 – 7,348 lbs (1,200 – 3,333 kg) \$1,000.00
7,349 – 242,506 lbs (3,334 - 109,999 kg) \$0.136079 per lb (\$.30 per kg)
242,507 lbs or more (110,000 kg or more) \$33,000.00

Subparagraph (c) of paragraph (1) of Rule 1200-01-13-.03 Remedial Action Fund is amended by deleting subparagraph (c) in its entirety and substituting the following language so that, as amended, Rule 1200-01-13-.03(1)(c) shall read as follows:

(c) Off-Site Shipment Fee

1. Hazardous Waste - Any generator of twelve hundred (1200) kg. or greater per year who shipped hazardous waste (excluding hazardous wastewater) off-site for treatment or disposal during the previous calendar year is hereby assessed a fee of \$.0275575 per kg (\$25.00 per ton) for wastes so shipped. For purposes of assessing this fee, any hazardous waste, excluding hazardous wastewater, which was shipped off-site, shall be considered to have been shipped off-site for treatment or disposal.
2. Hazardous Wastewater - Any generator who shipped "hazardous wastewater", as defined in T.C.A., Section 68-212-203, off-site for treatment and disposal shall pay an off-site shipping fee of \$.01377875 per kg (\$12.50 per ton)..
3. Out-of-state generators who treat or dispose of hazardous wastes at any commercial facility located in Tennessee shall be subject to the off-site shipping fees levied by parts 1 and 2 of this subparagraph.
 - (i) The commercial facility to which the waste is shipped for treatment or disposal shall be responsible for collecting the off-site shipping fee and remitting it to the State by June 15 of each year.
 - (ii) For the purposes of compensating the commercial facility in accounting for and remitting this fee, the commercial facility shall be allowed a deduction of two percent (2%) of the total amount due the State. No deduction shall be allowed if any portion of the payment is delinquent.
 - (iii) Commercial facilities shall collect off-site shipping fees from out-of-state generators beginning July 1, 1994.
 - (iv) Any out-of-state generator desiring to claim that they generated less than 1200 kg. of hazardous wastes per year and that they are therefore excluded from payment of this fee or to claim that they have previously paid the maximum fee of \$75,000, shall so certify to all receiving Tennessee facilities.
4. The maximum annual off-site shipping fee levied by parts 1, 2, and 3 of this subparagraph due from any single generator shall be seventy-five thousand dollars (\$75,000.00)

Subparagraph (f) of paragraph (1) of Rule 1200-01-13-.03 Remedial Action Fund is amended by deleting subparagraph (f) in its entirety and substituting the following language so that, as amended, Rule 1200-01-13-.03(1)(f) shall read as follows:

(f) Due Date of Fees, Reporting Requirements

1. All remedial action fees from in-state generators shall be paid to the Department on or before June 15 of each year.
2. Commercial facilities collecting off-site shipping fees from out-of-state generators shall pay such fees to the Department on or before June 15 of each year.

3. Transporters issued a transporter permit for any year prior to 1995 shall pay the assessed fee on or before the October 15th that immediately follows the issuance of the permit, if the fee was not paid upon issuance.
4. Hazardous waste transporters renewing permits shall pay the fee assessed by subparagraph (e) of this paragraph at the time the permit is issued.
5. If any part of any fee imposed pursuant to T.C.A. §§68-212-201 et seq. is not paid on or before the due date, the person or persons failing to pay such fee shall be subject to the following:
 - (i) The assessment of interest in an amount equal to that allowed in T.C.A. Section 47-14-103(3).
 - (ii) A civil penalty not to exceed ten thousand dollars (\$10,000) for each day of violation or an amount equal to 5 percent (5%) per month of any unpaid balance, whichever is less.
6. The Remedial Action Fee Report and supporting documentation consisting of copies of the Hazardous Waste Stream Reports and Off-Site Shipping Reports must be submitted to the department by generators of hazardous waste and hazardous waste waters by March 1 of each year.
 - (i) Supporting documentation must be returned by all persons that generated and/or shipped 1200 kg. or more of hazardous waste or hazardous waste waters in the prior calendar year.
 - (ii) Any person generating and/or shipping 1200 kg. or more of hazardous waste or hazardous waste waters who fails to submit the Remedial Action Fee Report and supporting documentation by April 1 of each year shall be subject to the assessment of a civil penalty of not less than five hundred dollars (\$500.00) and not more than ten thousand dollars (\$10,000.00) per day.

Authority: T.C.A. §§4-5-201 et. seq., 68-212-203, 68-212-206(e), 68-212-207, and 68-212-215(e)

The Division prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Field Offices located as follows:

Memphis Environmental Field Office
Suite E-645, Perimeter Park
2510 Mount. Moriah Road
Memphis, TN 38115-1520
(901) 368-7939/ 1-888-891-8332

Cookeville Environmental Field Office
1221 South Willow Avenue
Cookeville, TN 38506
(931) 432-4015/ 1-888-891-8332

Jackson Environmental Field Office
1625 Hollywood Drive
Jackson, TN 38305
(731) 512-1300/ 1-888-891-8332

Chattanooga Environmental Field Office
Suite 550- State Office Building
540 McCallie Avenue
Chattanooga, TN 37402-2013
(423) 634-5745/ 1-888-891-8332

Columbia Environmental Field Office
2484 Park Plus Drive
Columbia, TN 38401
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, TN 37921-5602
(865)594-6035/ 1-888-891-8332

Nashville Environmental Field Office
711 R. S. Gass Blvd.
Nashville, TN 37243-1550
(615) 687-7000/1-888-891-8332

Johnson City Environmental Field Office
2305 Silverdale Road
Johnson City, TN 37601-2162
(423) 854-5400/1-888-891-8332

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of October, 2007. (FS 10-21-07; DBID 748)